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Of Attorneys for Plaintiff, Fun in the Saddle, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORLAND DIVISION

FUN IN THE SADDLE, INC., an Oregon corporation,

No. _____

Plaintiff,

vs.

KERRITS ACTIVEWEAR, INC., a Washington corporation, and **KERRI J. KENT**, an individual,

COMPLAINT FOR PATENT INFRINGEMENT

Defendants.

DEMAND FOR JURY TRIAL

Plaintiff Fun in the Saddle, Inc. alleges as follows:

I. NATURE OF LAWSUIT

1. This is a patent infringement lawsuit brought under the patent laws of the United States, 35 U.S.C. §§ 271, 281, 283-285.

II. THE PARTIES

2. Plaintiff Fun in the Saddle (“FITS”) is an Oregon corporation with its principal place of business in Portland, Oregon.

3. On information and belief, Defendant Kerrits Activewear, Inc. (“Kerrits”) is a Washington corporation with its principal business address in Bingen, Washington.

4. On information and belief, Kerri J. Kent is an individual having an address at 4081 Post Canyon Drive, Hood River, Oregon, 97031. On information and belief, Ms. Kent is the sole owner, president and chief executive officer of Kerrits.

III. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. This Court has general and specific personal jurisdiction over Kerrits and Ms. Kent (collectively, “Defendants”) because, on information and belief, Defendants maintain continuous and systematic contacts with the State of Oregon, and Kerrits has sold and offered for sale to customers in this district and elsewhere products that infringe one or more claims of FITS’ patents.

7. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b).

IV. BACKGROUND

8. FITS was founded in 2003, and began selling riding breeches in 2005. Since its entrance into the equestrian wear market, FITS has distinguished itself from the competition by its innovative approach to improving the design of equestrian wear, specifically riding breeches. Over the years, FITS has developed state of the art riding breeches that optimize rider comfort.

9. FITS filed U.S. Patent Application No. 11/198,075 with the United States Patent and Trademark Office (“USPTO”) on August 5, 2005. After a full and complete examination of the application and the claims contained therein, the USPTO duly and legally issued U.S. Patent No. 7,533,423 (“the ‘423 Patent”), entitled “EQUESTRIAN RIDING BREECHES GARMENT

AND METHOD FOR ITS MANUFACTURE” on May 19, 2009 (attached as “Exhibit A”).

FITS is the owner of the entire right, title and interest in the ‘423 Patent, and maintenance fees have been paid.

10. FITS filed U.S. Patent Application No. 12/321,083 with the USPTO on January 14, 2009. This application was a divisional application from the ‘423 Patent, and, as such, is entitled to the benefit of the filing date of that application under 35 U.S.C. § 121. After a full and complete examination of the application and the claims contained therein, the USPTO duly and legally issued U.S. Patent No. 8,146,176 (“the ‘176 Patent”), entitled “EQUESTRIAN RIDING BREECHES GARMENT AND METHOD FOR ITS MANUFACTURE” on April 3, 2012 (attached as “Exhibit B”). FITS is the owner of the entire right, title and interest in the ‘176 Patent.

11. Kerrits is also engaged in the business of the design, manufacture and sale of equestrian wear. Kerrits’ products, including at least the Breathe Tight, Breathe Tight II, Flex Tight Fullseat, Channel Rib Flex Tight Fullseat, Cross-Over Fullseat Breach, and Cross-Over Bootcut Fullseat breeches (collectively, “Kerrits’ Breeches”), infringe one or more claims of the ‘423 and/or the ‘176 Patents.

12. On July 25, 2008, FITS, through its attorney, notified Defendants in writing that it had filed U.S. Patent Application No. 11/198,075 on August 5, 2005, and informed Kerrits that one or more of the pending patent claims would cover Kerrits’ products. This correspondence is attached as Exhibit C. On May 29, 2009, FITS’ attorney notified Defendants in writing that the ‘423 Patent had issued, and put Kerrits on notice of its infringement of that patent. This correspondence is attached as Exhibit D. On April 2, 2010, through its attorney FITS again notified Defendants that they were infringing the ‘423 Patent and that FITS was actively pursuing additional patent protection for key features described in the ‘423 Patent and embodied in certain Kerrits’ breeches. This correspondence is attached as Exhibit E.

V. INFRINGEMENT OF THE '423 PATENT

13. FITS realleges and incorporates by reference the allegations set forth in paragraphs 1-12.

14. Kerrits has been and is directly infringing of at least claim 1 of the '423 Patent under 35 U.S.C. § 271(a), by making, using, selling and/or offering for sale Kerrits' Breathe Tight breech.

15. Ms. Kent has been and is infringing at least claim 1 of the '423 Patent under 35 U.S.C. § 271(b) by actively inducing Kerrits to make, sell and offer to sell Kerrits' Breathe Tight breech.

16. Kerrits has been and is directly infringing at least claim 15 of the '423 Patent under 35 U.S.C. § 271(a), by making, using, selling and/or offering for sale Kerrits' Breathe Tight, Breathe Tight II, Flex Tight Fullseat, Channel Rib Flex Tight Fullseat, Cross-Over Fullseat Breach, and Cross-Over Bootcut Fullseat breeches.

17. Ms. Kent has been and is infringing at least claim 15 of the '423 Patent under 35 U.S.C. § 271(b), by actively inducing Kerrits to make, use, sell and offer to sell Kerrits' Breathe Tight, Breathe Tight II, Flex Tight Fullseat, Channel Rib Flex Tight Fullseat, Cross-Over Fullseat Breach, and Cross-Over Bootcut Fullseat breeches.

18. As of at least May 29, 2009, Defendants' infringement of the '423 Patent has been willful and Defendants have continued and continue to sell products that directly infringe the '423 Patent.

19. Defendants' infringement of the '423 Patent has injured and will continue to injure FITS unless and until the Court enjoins further infringement of the '423 Patent.

VI. INFRINGEMENT OF THE '176 PATENT

20. FITS realleges and incorporates by reference the allegations set forth in paragraphs 1-17.

21. On information and belief, Kerrits has been and is directly infringing at least

claims 1, 12 and 20 of the ‘176 Patent under 35 U.S.C. § 271(a), by making, using, selling and/or offering for sale Kerrits’ Breathe Tight, Breathe Tight II, Flex Tight Fullseat, Channel Rib Flex Tight Fullseat, Cross-Over Fullseat Breach, and Cross-Over Bootcut Fullseat breeches.

22. Kerrits’ infringement of the ‘176 Patent has injured and will continue to injure FITS unless and until the Court enjoins further infringement of the ‘176 Patent.

VII. JURY DEMAND

21. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, FITS requests a trial by jury of all issues so triable.

VIII. PRAYER FOR RELIEF

WHEREFORE, FITS asks this Court to enter judgment against Kerrits and Ms. Kent granting the following relief:

- A. A judgment declaring that Defendants have willfully infringed the ‘423 Patent;
- B. A judgment declaring that Kerrits has infringed the ‘176 Patent;
- C. A judgment, order, or award of damages adequate to compensate FITS for Defendants’ infringement of the ‘423 Patent, together with prejudgment interest;
- D. A judgment, order, or award of damages adequate to compensate FITS for Kerrits’ infringement of the ‘176 Patent, together with prejudgment interest;
- E. A preliminary and/or permanent injunction prohibiting Defendants and their subsidiaries, affiliates, parents, successors, assigns, officers, employees, attorneys, agents, and all other persons acting with Defendants or on their behalf from infringing the ‘423 Patent;
- F. A preliminary and/or permanent injunction prohibiting Kerrits and its subsidiaries, affiliates, parents, successors, assigns, officers, employees, attorneys, agents, and all other persons acting with Kerrits or on its behalf from infringing the ‘176 Patent;
- G. An accounting to determine information relevant to establishing the extent of Defendants’ infringement and amount of FITS’ damages;
- H. With respect to the ‘423 Patent, an award of costs and attorney fees pursuant to

35 U.S.C. § 285, to the extent the Court finds this case to be exceptional;

- I. With respect to the ‘423 Patent, an order trebling the damage award under 35 U.S.C. § 284, together with prejudgment interest; and
- J. Such other and further relief as this Court may deem proper and just.

Dated this 11th day of May, 2012.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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